
THE SEVENTH CIRCUIT BAR ASSOCIATION

Circuit Rider

Fall 2000

Judicial Conference on Technology A Success

By Jack Crowe

This past May, the 49th meeting of the Seventh Circuit Bar Association and Judicial Conference took place at the Drake Hotel in Chicago. The topic of the meeting was Technology and the Administration of Justice. The conference discussed the various roles that technology plays in federal court practice and explored the future of technological advances in high tech courtrooms and the electronic filing of briefs.

Professor Lawrence Lessig, a leading expert on Cyberspace law, was the keynote speaker and talked about the role courts will play in fashioning legal boundaries in the internet age. Lessig is the author of Code and Other Laws of Cyberspace which discusses myriad controversies surrounding cyberspace, including national sovereignty, privacy, free speech and intellectual property.

The conference also included a mock trial that demonstrated cutting edge technology currently available for use at trial as well as evidentiary problems raised by that technology. Panel discussions were held on the increasingly frequent battles over discovery of electronic corporate records and plans by various courts in the Seventh Circuit to move towards electronic filing of court documents. Recently appointed Seventh Circuit Judge Ann Williams gave a luncheon address on Piracy in the Internet Age.

In a session called "Talk to the Judges," Judge Bill Bauer moderated a lively panel of Seventh Circuit judges on topics ranging from civility between lawyers and judges during oral argument to the need for exacting Circuit Rules relating to written briefs. District Judges from Illinois, Indiana and Wisconsin also held separate breakout sessions to increase communication between the bench and bar.

Justice Stevens Speaks

Sporting his trademark bow tie, Justice John Paul Stevens spoke at the annual dinner about lawyers laboring under tight deadlines. He recounted a conversation he once had with former Solicitor General Robert Bork.

Bork had mentioned that he occasionally did not have sufficient time to prepare for oral arguments before the high court, Stevens said.

"But then he said, 'You know, it's a strange thing, but I think some of the best arguments I made were ones when I didn't have half the time I needed to get ready,'" Stevens recalled.

"Sometimes we actually do better than I think we might, if we had all the time in the world to add a few footnotes," Stevens said.



Justice John Paul Stevens speaks at the annual dinner.

He then drew laughter from his listeners by adding: "Wait until you see my opinion in Carmell; you'll see what happens when you have plenty of time."

In *Carmell v. Texas*, No. 98-7540, a divided Supreme Court threw out some of the convictions of a man found guilty of sexually assaulting his stepdaughter. The majority held that four of Scott Carmell's fifteen convictions violated the constitution's ex post facto clause because they were based on a Texas law enacted after Carmell allegedly committed the crimes.

Chief Judge Posner's Remarks

In his final "State of the Circuit" address, now former Chief Judge Richard Posner noted that filings before the appeals court have risen by about 60 percent since 1982. The number of judgeships has increased from nine to eleven, or by 22 percent, Posner said.

But he added that those lopsided statistics have not translated into a slowdown in productivity by the Circuit's judges. Technology - in particular, the speed and portability offered by computers - has helped the jurists and their law clerks keep up with the growing caseload, Posner said.

Solicitor General Waxman Speaks on Defending Congress

Solicitor General Seth Waxman spoke at the annual dinner about the role of the Solicitor General in defending acts of Congress in the Supreme Court.

Waxman recalled that earlier this year he received a letter from House Speaker Dennis Hastert questioning whether the United States' refusal to defend the constitutionality of a 1968 law - which sought to overrule the

Supreme Court's decision in *Miranda v. Arizona* - was consistent with the constitutional duty of the Executive to defend acts of Congress.

Waxman noted that the Solicitor General may not defend an act of Congress when defending a statute would require the Solicitor General to ask the Supreme Court to overrule one of its constitutional precedents.

This explains why the Solicitor General concluded that *Miranda* should not be overruled notwithstanding Congress' 1968 law, Waxman said.

Badger Breakout Session

By Bill Levit

The Wisconsin breakout session of "Talk to the Judges" consisted of Chief Judge Stadtmueller, Judge Clevert and Magistrate Judges Gorrence and Callahan from the Eastern District; Chief Judge Shabaz and Clerk-Magistrate Judge Skupniewitz from the Western District; and Bill Levit of Godfrey & Kahn's Milwaukee office as moderator.

The program began with a discussion of whether Eastern District judges write too many opinions and whether having oral argument as the norm might speed up disposition of motions. Chief Judge Stadtmueller pointed out that the time within which Eastern District judges dispose of matters is satisfactory compared to other Districts. The panelists, as well as judges and practitioners in the audience, discussed ways in which Eastern District judges can become more involved with civil cases, which can often reach the pretrial conference stage without any meaningful contact between the Court and counsel.

The panelists and audience all seemed to agree that having a district judge or magistrate judge available to resolve issues that arise during depositions has an in ter-rorm effect and reduces the need to file deposition-related motions.

The group explored the procedure for making a court filing that quotes from information designated "confidential" by the opposing party. There was also a lively discussion of the tension between the Federal Rules of Civil Procedure's bias in favor of video and audio recording of depositions and Local Rule 7.06 in the Eastern District, which proscribes reading more than five pages of a deposition as well as Judge Shabaz's Standing Order requirement of narrative summaries.

Most of the group was surprised to learn from Judge Crabb that despite her courtroom being wired for 21st Century technology, these high tech facilities are rarely, if ever, utilized.

Hoosier Judges And Lawyers Talk

By Richard L. Darst

At the Seventh Circuit Conference, lawyers and judges from Indiana sat down to talk about ways to improve practice in the Indiana federal courts. Chief Judge Sarah Evans Barker chaired the discussion, which

included Judge Moody, Judge Miller and Magistrate Judge Springman. In a wide ranging discussion, several judges stated their preference for lawyers being prepared to discuss the merits early in a case at pretrial conferences. Some lawyers wondered about the cost to litigants of such early preparation.

Judge Miller talked about the technology available in his courtroom, while Judge Barker discussed some pitfalls of lawyers using technology with which they are not familiar. All of the judges encouraged attorneys to use the courtroom to practice the technology before trial. They also stated that court video conferencing facilities may be available for attorneys taking remote depositions.

Clerk Laura Briggs described her efforts over the next year or two to implement a new electronic filing procedure for the Southern District.

Regarding the timing of expert reports before or after summary judgment motions, one attorney noted that parties do not like to spend money on expert reports unless they know the case is going to trial. In response, one judge suggested leaving the matter for agreement by the parties at a pretrial conference.



At the judicial conference, the Seventh Circuit Bar Association presented Judge Ann Williams with her portrait.

Lawyer of the Year - Judge Ann Williams

The Chicago Lawyer magazine has named Judge Ann Williams its Person of Year for 2000. In a laudatory article, the Chicago Lawyer noted that Judge Williams, who joined the Seventh Circuit in January of this year, is the first African-American to serve on that court. Praising her for her wisdom on the bench, the Chicago Lawyer noted that Judge Williams enjoys wide support from a cross-section of the legal community. The paper also noted that this is one of a series of firsts for Judge Williams. She was one of the two first African-American women to clerk for judges in the Seventh Circuit. In 1985, she became the first African-American woman to become a U.S. district judge for the Northern District of Illinois. Also, at age 35, she was among the youngest judges on the federal bench. Chief Justice Rehnquist appointed her as the first African-

American chair of a Judicial Conference Committee, and in 1999 she became the first African-American president of the Federal Judges Association. Congratulations Judge Williams.

Welcome Bankruptcy Judge Coachys

Chief Judge Joel Flaum has announced the appointment of James Coachys to a 14-year term as Bankruptcy Judge for the United States District Court for the Southern District of Indiana. Judge Coachys will also serve as a bankruptcy judge for the Southern District of Illinois. Judge Coachys has served as a state court judge in Johnson County, Indiana since 1989.

News You Can Use

Save the Date

The next Seventh Circuit Judicial Conference will take place in Indianapolis May 20 through 22, 2001. Stay tuned for upcoming news about arrangements for this special 50th Anniversary Conference.

Bar Meeting Set

The next meeting of the Seventh Circuit Bar Association will be on March 3, 2001 at the Union League Club of Chicago at 10:00 a.m. The Union League is located at 65 West Jackson Boulevard.

Disclosing Your Disclosure Statement

Attorneys filing briefs in the Seventh Circuit should know that the Court now requires that the Rule 26.1 corporate disclosure statement must be included in both the printed brief and in the computerized version of the brief on diskette. Attorneys may retype or download the corporate disclosure form onto the disk. The computer page containing the form does not need to be numbered on the computer copy.

New Bar Association Officers

Congratulations to Richard Darst of Indianapolis, who is the new President of the Seventh Circuit Bar Association. Darst was elevated to that post at the recent Judicial Conference, taking over from Duane Kelley of Chicago. Geraldine Alexis of Chicago moved up to the position of First Vice President, and Bill Levit of Milwaukee is now Second Vice President. Howard Adelman remains Treasurer.

New members of the Board of Governors were also introduced. The current roster of Governors from Illinois includes: Julie Bauer, Michael Coffield, Reuben Hedlund, Michael Monico, Michael Pope and Jack Strellis. The

Indiana Governors are Max Hittle, Patricia McCrory and Elizabeth Russel. The Wisconsin Governors are Daniel Conley, Kathleen Donius and Dean Strang.



Jack Crowe, Program Committee Chair; Justice John Paul Stevens; Julie Bauer, Chair of the Meetings Arrangements Committee; and Past Seventh Circuit Bar Association President Duane Kelly, at the Seventh Circuit Conference.

Letters to the Editor

I am a member of the Seventh Circuit Bar Association and would like to share with you a recent experience I had in attempting to file a brief with the Court of Appeals. Because Circuit Rule 31(e) limits the information to be included on the digital media disk to "nothing more than the text of the brief," we provided the Clerk's office with just that - a disk containing the brief's text from page one to the end. The Clerk's office rejected our brief. When I contacted them for an explanation, I was told that the Court wants the disk to contain not only the brief's text, but also its cover, table of contents, and table of authorities. Although I asked if including that additional information would throw off the word count for Rule 32, I could not get an answer.

-Chicago Attorney

Editor's Reply: The Clerk's office informs us that the entire brief (without appendix) is required on the computer disk, but only the "text" matters for the word count and not the tables of contents, authorities, etc. Thanks for bringing this to our attention.

Letters to the Editor with questions or comments are accepted for possible printing. Names will not be printed unless requested. Letters may be addressed to the Seventh Circuit Bar Association, 219 South Dearborn Street, Suite 2722, Chicago, Illinois 60604.
